

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

APR 0 3 2013

OFFICE OF WATER

#### INTERIM RESPONSE

April 3, 2013

Ms. Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2012-001337 (Previously HQ-FOI-01980-12)

This letter is in response to your Freedom of Information Act (FOIA) request on behalf of Earthjustice, received on September 12, 2012.

As agreed upon, EPA asked its principal staff involved in developing the reporting rule or its withdrawal if they could recall any emails regarding the reporting rule submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemen's Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association. EPA also asked these same staff members if they could recall any emails exchanged with non-governmental organizations or individuals (such as agricultural industry representatives) or state personnel regarding the completeness, accuracy, or accessibility of state files, or individual facilities.

Enclosed you will find a compact disk with documents responsive to your request. We have withheld portions of five of the emails pursuant to FOIA Exemption 6, and withheld a conference call number in one email as not responsive.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: <a href="https://doi.org/10.2046/">https://doi.org/10.2046/</a>, Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004. Your appeal must be made



# SMITED STATES ENVIRONMENTAL PROTECTION MENCY

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### INTERIM RESPONSE

April 3, 2013

Ma. Eve C. Ciarther, Esq. Earthjustice 156 W. Harris St., Suite 800 New York, NY 10038-5326

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This fetter is in response to your Freedom of Information Act (FOTA) request on behalf of Farthy of its request on September 12, 2012.

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FOLA and Pir ney Branch. (200 Pennsylvania Avenue, N.W. (28221), Washington D.C., 0460 Ifment legitmensure ass. Unity mean mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. N.W. If you are admitting your appeal on hapd delivery courier service, or overnight delivery, you must address your consupportance to 1301 cassonation Avenue, N.W. Room o4161, Washington D.C., 20014. Your appeal must be made

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in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Becky Mitschele at (202) 564-6418 should you have any questions concerning this matter.

Sincerely,

Allison Wiedeman Chief, Rural Branch Water Permits Division

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Enclosures:

Compact disk (CD)

or, writing, and it must be submitted in later than 30 entender days from the date of this letter. The Agency will not consider appends received after the 30 oriends day limit. The append tetter should append in 100 A number listed above. For quickest possible handling, the appeal letter and the envelope should be marked. I recdom of Information wer Argert."

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Sincerely

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OFFICE OF WATER

April 4, 2013

Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

Re: Amended Freedom of Information Act Response # 2012-1337 and 2012-1516

Dear Ms. Gartner:

The purpose of this letter is to provide to you an amended response to the above-referenced Freedom of Information Act (FOIA) requests for data the U.S. Environmental Protection Agency (EPA) collected from states regarding concentrated animal feeding operations (CAFOs), to explain the reasons why this release was amended, and to request that you return the original disk and destroy any copies of the disks or electronic or paper files containing information provided in the EPA's original FOIA response dated February 4, 2013.

Following concerns raised by the original response to your FOIA requests, the EPA has conducted a comprehensive and thorough review of the material released. We have determined that, of the twenty-nine states<sup>1</sup> for which the EPA released information, all of the information from nineteen of the states was either available to the public on the EPA's or state websites, is subject to mandatory disclosure under state or federal law, or does not contain data that implicated a privacy interest; the data from these nineteen states is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. However, the EPA has determined that some personal information received from the ten remaining states<sup>2</sup> is subject to Exemption 6. The EPA is taking the follow-up actions described below to prevent further dissemination of that information.

#### BACKGROUND

Exemption 6 of the FOIA protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). After answering the threshold question of whether the information is "personnel and medical files and similar files," an agency must determine whether a protectable privacy interest exists.<sup>3</sup>

<sup>3</sup> Multi Ag. Media LLC. v. U.S. Dep't of Agriculture, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008).

<sup>&</sup>lt;sup>1</sup> The twenty-nine states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

<sup>&</sup>lt;sup>2</sup> The remaining ten states are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

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If no substantial, more than *de minimis*, privacy interest is found, the information at issue must be disclosed. If a substantial privacy interest exists, the public interest must be weighed against the privacy interest in nondisclosure. Information may only be withheld if the privacy interest outweighs the public interest in disclosure.

Exemption 6 does not extend privacy protection to information that is well known or widely available within the public domain. Because the EPA could not rely on Exemption 6 to justify withholding information that has been "officially acknowledged" or is in the "public domain," the EPA appropriately released information contained on publicly available websites or subject to mandatory disclosure requirements of federal or state permitting programs. Similarly, there is not a substantial privacy interest in information that, under federal or state permitting program requirements, *must* be publicly noticed and/or available. Therefore, Exemption 6 does not permit withholding information from the public that, by law, the public has the right to know. Because the information described above is already in the public domain, there is not a substantial privacy interest that would authorize the EPA to withhold the information under Exemption 6. Finally, the privacy interest in Exemption 6 does not extend to information that relates to corporations and businesses. Courts view an individual's expectation of privacy as diminished with regard to matters in which he or she is acting in a business capacity.

Some personal information received from ten of the twenty-nine states was not on EPA or state websites or subject to mandatory disclosure under federal or state law. The EPA has thoroughly evaluated every data element from each of these states and concluded that personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters implicate a substantial privacy interest that outweighs any public interest in disclosure. Therefore, the EPA is taking the follow-up actions described further below with regard to that information.

### **EPA'S AMENDED FOIA RESPONSE**

After careful review of the state CAFO data responsive to the FOIA requests, the EPA is amending its FOIA response and providing you with a new version of this response enclosed herein. This amended response contains data for twenty-nine states (the same states included in the original

<sup>9</sup> Sims v. CIA, 642 F.2d 562 n. 74 (D.C. Cir. 1980); Nat'l Parks and Conservation Ass'n v. Kleppe, 547 F2d 673, 686 n. 44 (D.C. Cir. 1976) ("[Exemption 6] has not been extended to protect the privacy interests of business corporations.). The U.S. Supreme Court has regularly referred Exemption 6 as involving an "individual's right of privacy." Fed'l Communications Comm'n v. AT&T, 131 S.Ct. 1177 (2011) (citing Department of State v. Ray, 502 U.S. 164, 175 (1991)).

<sup>&</sup>lt;sup>4</sup> Dep't of Air Force v. Rose, 425 U.S. 352, 372 (1976).

<sup>&</sup>lt;sup>5</sup> Dep't of Defense v. Federal Labor Relations Ass'n, 510 U.S. 487, 497 (1997).

<sup>&</sup>lt;sup>6</sup> Trentadue v. Integrity Comm., 501 F. 3d 1215, 1234 (10th Cir. 2007) (concluding that the Inspector General's substantive response to the Integrity Committee's questions should be released because the information is a public document that was included in the record of the appeal; thus subsequent disclosure would not invade the individual's privacy rights at all.).

<sup>7</sup> David v. U.S. Dep't of Justice, 968 F.2d 1276 (D.C. Cir. 1992) (citing Afshar v. Dep't of State, 702 F.2d 1125, 1130-34 (D.C. Cir. 1983)).

<sup>&</sup>lt;sup>8</sup> See 33 U.S.C. § 1342(j) (requiring that "[a] copy of each [NPDES] permit application and each [NPDES] permit ...be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction."); and 33 U.S.C. § 1342(a)(1), (b)(3) (NPDES permits may only be issued following a public hearing, and states implementing NPDES programs must provide for public notice and opportunity for a public hearing on all permit applications). See also, Arizona's Water Quality Control Statute, Ariz. Rev. Stat. Ann. § 49-205(B); Georgia's Land Disposal and Permit Requirements, Ga. Comp. R. & Regs. 391-3-6-.11; North Dakota's Control of Pollution from Animal Feeding Operations, Public Participation, N.D. Admin. Code 33-16-03.1-13; Oregon's Permit Procedures for Confined Animal Feeding Operations Program, Or. Admin. R. 603-074-0012.

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For a v. U.S. Creat of Justice, 958 ft. 2d 1276 (D.C. Ch. 1992) (nights A false v. Dap't of State, 2021, 2d 1125, 1136-3)

See 35 U.S.C. § 1342(f) (nequiring that "[4] copy of each (WPEES) permit application and each (MPDES) permit. Its available. Such permit application or comit, or position that soft juriles he available or request for the purpose of reproduction."): and 33 U.S.C. § (1410 kg.), (b)(3) (MPDES permits may only be issued following a public hearing, and states applications "it and 33 U.S.C. § (1410 kg.), (b)(3) (MPDES permits may only be issued following a public hearing, and states applications). See also, Armona's Water Quality Control Statute, Articles and Power Republic hearing on all Discoval and Permit Requires may Ge Comp. F. & Reg. 1914-6-11, North Discota's Cointel of Pollution from Armond Feeting Operations, "abite Feetingstion, M.D. Admit. Code 33-16-03,1-13, Oragon's formit Procedure: for Confined.

Since v. Co., 642 Fold Sci. n. 74 (D.C. Cir. 1980); plan't Profes and Conservation. Am. et y Magnet. 547 Fold 671 of Sci. n. U.C. Cir. 1976) ("Recomption 61 into not been extended to protect the privacy interests of husiness co., considered. The U.C. Suprome Court has regularly substred E-comption a as involving an "individual"s right of privacy. [15] [15] [15] (2011) (ciring Denormous of State v. S. et al. 202 U.S. 164 (23) (1991))

response) but redacts portions of the data for ten states. As discussed above, the EPA determined that redacting data from the remaining nineteen states is not necessary or appropriate because the information is entirely publicly available on websites or contains information from the federal NPDES or state permitting programs, which is required by federal or state law to be available to the public. Furthermore, the EPA is withholding portions of records, including portions of spreadsheets from ten states, pursuant to Exemption 6. The portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations, in order to serve the public interest of ensuring that the EPA effectively implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

In addition to the items redacted above, this amended response, as was the case for the original response, does not include certain documents, or portions of documents, which have been determined to be exempt from mandatory disclosure pursuant to Exemption 5, 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a)(5). The documents the EPA has withheld pursuant to this exemption include materials that would be protected under the attorney-client privilege and deliberative process privilege. An amended itemized list of the records withheld, and reasons for withholding them, explained herein, is provided as an attachment to this letter.

#### **NEXT STEPS**

I am requesting that you return all copies of the original response disk and that any disks or electronic or paper files containing information from the original response be destroyed. Please return all copies of the original data to: Becky Mitschele, EPA, MC 4203M, 1200 Pennsylvania Ave., Washington, DC 20460.

This letter concludes our response to your request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: <a href="https://hq.foia@epa.gov">hq.foia@epa.gov</a>. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

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If you have any questions concerning this response please contact Becky Mitschele at (202) 564-6418.

Sincerely,

Nancy K. Stoner

Acting Assistant Administrator

If you have any quastions concerning this response plants context Book y Mitschele at (202) 564-

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Sincerely,

Nancy K. Stener Acting Assistant Administrator

# ATTACHMENT: Itemized List by Category of Withheld Material

Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146	293
2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88	206
5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39
10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264
5/01/12 to 12/01/12	Records containing facility-specific information that includes telephone numbers, email address, names and addresses of individuals, and notations related to personal matters for AFOs/CAFOs.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	15	45

# ATTACHMENT: Besided List by Category of Withheld Material



February 28, 2013

By Email: hq.foia@epa.gov

National Freedom of Information Officer U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW (2822T) Washington, DC 20460 (202) 566-1667 FAX (202) 566-2147

E-mail: hq.foia@epa.gov

Re: Freedom of Information Request for Records Reflecting Industry Response to Release of Documents Relating to Withdrawal of CAFO Reporting Rule, and for Records Reflecting Other FOIA Requests Related to the Withdrawal of the CAFO Reporting Rule

#### Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In accordance with FOIA, please provide us with the following records relating to the rule proposed by the Environmental Protection Agency ("EPA") on October 21, 2011, under section 308 of the Clean Water Act, to collect information about concentrated animal feeding operations (CAFOs) (the "CAFO Reporting Rule"), and the withdrawal of the CAFO Reporting Rule announced by EPA on July 20, 2012:

- All unredacted correspondence or other records received by EPA from any private party, corporation, non-profit organization, or government agency or body, on or after February 15, 2013, regarding EPA's release of documents relating to concentrated animal feeding operations and/or other livestock farming operations, pursuant to FOIA to Earthjustice, Natural Resources Defense Council (NRDC) and/or Pew Charitable Trusts (Pew), and any records relating to such correspondence received by EPA.
- 2. All unredacted records reflecting any communications, written or verbal, between the EPA and any private party, corporation, non-profit organization, or government agency or body, on or after September 1, 2012, relating to or referencing the FOIA requests submitted by Earthjustice (HQ-FOI-01980-12), and separately by NRDC and/or Pew, to EPA regarding the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting EPA's collection of information about CAFOs from state regulators.
- 3. All unredacted records reflecting any communications, written or verbal, between the EPA and any private party, corporation or non-profit organization, on or after October

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Release of Dogument Relating to Withdrawal of CAPO Reporting End for and for Records Relating End.

Records Reflecting Other FOLA Requests Related to the Withdrawal or the CAPO Reporting For the CAPO Reporting Forms.

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- All one discred court spondence or other records, received by Islê's from any private party, corporation in in-profit organization, or government openes or receiv on or other Polymany 15, 2013, regarders IPA is release of decements relating to concentrated animal feedlog operations and or rether livestock farming operations, pursuant to Paula to barringsone. Natural Resources Defence Courted (NRDC) and or from Charatagle Trassactions (few), and any records relating to such concespondence received by
- All unreducted records reflecting any communications, written is verbal, between the EFA and any project are party, corporation, non-profit organizations, or government, underso or body, or or after suprember 1, 2012, monthing to no referencing the FOIA requests submitted to Europeasure (HQ-FOI-OI-OI-OI-OI and separately by NRDC and/or Provers to FPA requesting that CAFO Reporting Pales and/or the 2012 withdrawall of the CAFO Reporting Rule and/or the 2012 withdrawall mitter countries and CAFO. See a state requisions
- All meads ted records reflecting any communications written or verified between the CPA and any provide party, corporation or non-profit organization, on or other October

- 17, 2012, relating to or referencing EPA's release under FOIA of documents related to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting EPA's collection of information about CAFOs from state regulators, to Earthjustice, the NRDC and/or Pew.
- 4. All records constituting or referencing a request under FOIA for records related to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule, including documents reflecting or relating to EPA's collection of information about CAFOs from state regulators, received by EPA since July 20, 2012, and any letter or email from EPA directly responding to such FOIA request. This request seeks only FOIA requests, EPA's written responses to said FOIA requests, and any records created by or received by EPA specific to those requests. The request does not seek any documents released by EPA in response to said FOIA requests; EPA need not produce the FOIA request submitted to it by Earthjustice, or EPA's responses to Earthjustice.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials.

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable nonexempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

- 17, 2012, identifying an referencing EPA's release ander 10 NA of documents added to the CAFO Repending Rafe and on the CAFO Repending Rafe and on the CAFO Repending Rafe belowing decoments reflecting EPA's collection of information around CAFOs from such a gate regulators, to harthywatice, the NRDC and/or how
- All records considering or eferencing a request inner EOLA for records related to the CAFO Reporting Rule.

  CAFO Reporting Rule and/or the 2012 withdraws of the CAFO Reporting Rule, including documents self-action or relating to EPA's collection of information about CAFOs to an age, equipment, required by EPA solected and 20 °0° C, and not letter or email from EPA directly responding to such EOL exquest. This request seeks only EOLA requests. CaPA a written esponses to such EOL exquest. This request seeks only created by or received by EPA specific to those request. I ac request loss not seek any documents related by EPA in response to the EDA requests. Let's need of Eparthecia the EOLA requests when the EPA in response to the EBA is reproduct to

The use of the word record above includes, but is not limited to, documents in all forms possibly electronics information ernalls, faxes. letters, comments, expense summanies of telephone conversations, handwritten not a, meeting minutes of unvertex uniterals.

The use of the word functioned "nowe means that we are seeling but disclusine of it interpretation in the requested record. In the event that you determine that you can have lose only seemed in a record that falls within the scope of this request, please the edge of the record with only the information that on have determined in interpretation confidential second that information that we have determined in in-

If any information requested herein was, but is no longer, in left A's presession or suspect to control state whether the (a) mirrorger lost, (b) has been destroyed to has been transferred to convoluntarily to others, or (d) otherwise disposed of and in each instance explain the discounters corrounding and authorization for such disposition of a and state the date of a spect to note date of a

If you cleam that are of the foregoing information is exempt from magnitury disclinates, we respectfully request that you

- Provide at index of all detimants containing the requested informatives, reflecting the view author addresses, muchor at major, and subject major of such discurrents.
  - 21 State mereompany van delinate be applicable to such information request.
- (3) State will connectantly the cesson why such exemption is applicable to each information equives.
- (4) Examine each priormation request to determine it reasonably strengthic annexempt information exists which may be released after reducing afformation deemed to be exempt, and
- (5) Exercise your discretion to release such reports, or withstanding the availability of a larger for withholding.

#### INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, by email. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at <a href="mailto:egartner@earthjustice.org">egartner@earthjustice.org</a>, or mail them to:

Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

As FOIA requires, we expect your response as expeditiously as possible, and no later than within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7381.

Thank you for your assistance in this matter.

Sincerely,

Eve C. Gartner

Ene l. gantner

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To the extent that the equasted records are available in a readily are easily electronic copies equant we would getter to receive the focuments electronically by entail it should copies are marriated for well except imper copies. Plants and records to fixe a fairness account of earthful them to

or 1 sering list entirembles for dillion St., Sunc 800 or York, NY 10938-5325

As FOIA requires, we expect your response as expeditionally as possible and no intertion within twenty working layer of pour receipt of this request. In the event that you have and questions concerning the type of materials we are interested in receiving, of this confluct me for catally or by telephone at 217, 846-7381.

Dank you for your assistance in this matter

Since

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February 28, 2013

By Email: hq.foia@epa.gov

National Freedom of Information Officer U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW (2822T) Washington, DC 20460 (202) 566-1667 FAX (202) 566-2147

E-mail: hq.foia@epa.gov

Re: Freedom of Information Request for Records Reflecting Industry Response to Release of Documents Relating to Withdrawal of CAFO Reporting Rule

Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Please provide us with any correspondence received by EPA from one or more agricultural industry groups on or after February 15, 2013, regarding EPA's release of documents relating to concentrated animal feeding operations and/or other livestock farming operations, pursuant to FOIA, to Earthjustice, Natural Resources Defense Council (NRDC) and/or Pew Charitable Trusts (Pew).

#### INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested record is accessible in an electronic format, please provide the documents electronically, by email. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at <a href="mailto:egartner@earthjustice.org">egartner@earthjustice.org</a>, or mail them to:

Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

As FOIA requires, we expect your response as expeditiously as possible, and no later than within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7381.

Thank you for your assistance in this matter.

Sincerely,

Eve C. Gartner

Ene l. gantner



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As Feel's requires, we careed your repains as expeditionally as possible, and to later have within exemtly working they a vote receipt of this exquest. In the event that post have any questions concerning the type of materials we are interested in receipt the process of the expension of the exp

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# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OFFICE OF WATER

April 30, 2013

Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

RE: Amended Freedom of Information Act Response # 2012-1337 (previously HQ-FOI-01980-12)

Dear Ms. Gartner:

The purpose of this letter is to provide you a second amended response to the above-referenced Freedom of Information Act (FOIA) request for data the U.S. Environmental Protection Agency (EPA) collected from states regarding Concentrated Animal Feeding Operations (CAFOs). The enclosed disk contains largely the same information released in the first amended response. The information released in this second amended response, however, reflects an additional quality-assurance review that EPA has conducted to ensure that requestors have obtained all responsive information, but none that is subject to protection pursuant to FOIA Exemption 6. 5 U.S.C. § 552(b)(6). As a result of this review, the EPA has added several responsive documents that were inadvertently omitted and redacted some additional privacy-related information related to facilities in Montana and Nebraska.

This amended response, as was the case for the previous responses, does not include certain documents or portions of documents, which have been determined to be exempt from mandatory disclosure pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other an agency in litigation with the agency") and 40 C.F.R. § 2.105(a). The withheld Exemption 5 documents include materials that would be protected under the attorney-client privilege and deliberative process privilege. See attachment to this letter.

I am requesting that you return the previously released disks (from the February 4 and April 4 release) and that any copy of electronic or paper files of the February 4 or April 4 release be destroyed. Please return the previously released disks to: Becky Mitschele, EPA, MC 4203M, 1200 Pennsylvania Ave., Washington DC 20460. We also request that you confirm that you have destroyed all copies of this information.



# SHATED STATES FAVIRONMENTAL PROTECTION ASSAULT

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#### EIRS DE IncA

Eve C. Usriner, Esq. Enriqueites Se V. Histo, St. Suite 800 New York, NY 10038-5320

[3] smended Freedom of Information Aut Bergomae's 2012-1317 (previous); HQ-PC1-91980-12)

Dear Mail Lorings

The purpose of this letter as to provide you a second assected responsible for determining freedom of information Act (FOIA) request for data the U.S. Havibean account in the involved in Agency (EFA) collected from states regarding to occurrated Animal Fooding Operations (CAFOs). The enclosed distributions largely the same information released in the this assembled response. The information released in this second amended response, between effect an additional quality-assumption review that EFA in conducted to answer that responsive information, but more than is subject to protection personnel to IVII a fixed approach to the CAFO SCO STOOK (SAFO) of As a result of this occion the EFA instabled neveral responsive documents that were madvertently unitted and reducted come additional provecy-related information related to facilities in Montana and Nebrusia.

This amended response, we see the case for the previous responses, these not marined certain documents as notification, which have been determined to be a cuspicition mandatory disclosure pursuant to FOA if a marinion 5, 5 U.S.C. § 5.54(a)(5) (macrospines of the exemption 5, 5 U.S.C. § 5.54(a)(5) (macrospines of enters which would not be available by law to a party other an egency matrix the agency) and 40 C.F.R. § 2 (dSea). The orithest Exemption 5 documents that we said be proposed under the according process or where the attachment to this letter.

Laws recuesting that you return the previously released disks. From the first number condition and their any copy or electromic or gaper files of the field sary 4 or April 4 release be destroyed. Please return the previously 1 cased disks up feeley Mitschele, EPA, MC 4203M 1 collections Asia, Washington DC 20460. We also recover that you continuities you have destroyed all copies of this information.

This letter concludes our response to your request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Rom 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact me at (202) 564-0901 or Becky Mitschele at (202) 564-6418 if you have any questions concerning this matter.

Sincerely,

Allison P. Wiedeman, Chief

Rural Branch

Office of Wastewater Management

Attachment

This letter concludes our response to your request. You may appeal this response to the Mational Freedom of Information Officer, U.S. IEPA, FOTA and Privacy, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 204604(U.S. Postal Service Only), FAX: (202) 365-2147, E-mail: hq foia@opa gov. Only mems mailed through the United States Postal Service may be delivated to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Rom 64164, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar days from the date of this letter. Agency will not consider appeals received after the 30 calendar day litter. The should include the tracking number listed above. For quicker, possible handling, the appeal letter and its envelope should be marked "Freedom of Information Ast Appeal.

Please contact me at (202) 564-9901 or Bucky Witscheld at (202) 564-6415 if you have my questions concerning this matter.

Suprerely

Hisan P. Wiccenson, Chief

Runal Branch

Office of Wastewater Management

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# ATTACHMENT: Itemized List by Category of Withheld Material

Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx.) Number of Pages	
5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146 293		
2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88 206		
5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39	
10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264	
5/01/12 to 12/01/12	Records containing facility-specific information that includes telephone numbers, email address, names and addresses of individuals, and notations related to personal matters for AFOs/CAFOs.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	15	45	

## ATTACHMENT: Itemseed Lat by Category of Whithold Material

	3 (1.8.C. ) 552(b) and 40 7.F.K. ( 2.105(a)	



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

JUN 06 2013

OFFICE OF WATER

Ms. Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2013-004082

This letter is a complete response to your Freedom of Information Act request submitted on February 28, 2013, relating to responses to the Agency's release of documents under the FOIA request on the CAFO Reporting Rule.

The enclosed CD contains all documents that are responsive to your request. We did not withhold any responsive records. As a point of clarification, we are not including all correspondence between EPA and Earthjustice because, as we discussed, Earthjustice already possesses those records.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: <a href="https://hqfoia@epa.gov">hqfoia@epa.gov</a>. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."



# UNITED STATES ENVIRONMENTAL PROTECTION AGRACY AND TO SHAFE

JUN 08 2013

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vis File C. Garmer, Esq. Santi-reside 156 William St., Suite 800 New York, NY 10038-5326

Freedom of Information Act Request FPA-110-2013-068083

This letter is a complete response to your Freedom of Information Act request submitted on foregary 28, 2013, retarms to response to the Agency's release of decoments under the FOLA request on the CAFO Reporting Rate

The enclosed CD contains all documents that are responsive to vour request. We did not writhhold any responsive recents. As a point of clarification, we are not meluding all correspondence between CPA and burripastice because, as we discussed harthquence already rossed their reducts.

You may appeal this demail to the National Procuom of Information Office, U.S. EPA, and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (28227), Washington, D.C. 10460, formall, it from dant age. Only from radied through the United States Frestal Service may achievery courier service, or overnight delivery, you must address your correspondence to 1301 derivery, courier service, or overnight delivery, you must address your correspondence to 1301 in writing, and it must be submitted to fator than 30 calendar days from the date of this lense the Agency will not consider appeals received after the 10 calendar day from the date of this lense should mounde the ECIA number hasen there. For quickers possible handing, the appeal lense and its directors anough by marked Treston of Information Act Appeal.

Please contact Becky Mitschele at (202) 564–6418 should you have any questions concerning this matter.

Sincerely, Allin Wilder

Allison Wiedeman Chief, Rural Branch Water Permits Division

Enclosures:

Compact disk (CD)

Sheese compact Booksy Minschele at (202) 564-6418 should wan have any questions concerning this manar

Sincerely

Althour Wiedeumn Chief, Rural Branca Water Petrolls Division

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### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

FEB 0 4 2013

OFFICE OF WATER

#### PARTIAL DENIAL LETTER

February 4, 2013

Ms. Eve C. Gartner, Esq. EarthJustice 156 William St., Suite 800 New York, NY 10038-5326

RE: Freedom of Information Act Request EPA-HQ-2012-001337 (Previously HQ-FOI-01980-12)

This is in response to your Freedom of Information Act (FOIA) request on behalf of EarthJustice, received on September 12, 2012.

Per conference call and email communications, we agreed to transmit all records responsive to your FOIA request items 3-6, by February 4, 2013. We appreciate the extension of time to review and transmit email records related to items 1 and 2 in your FOIA request. We agreed to transmit email records by February 20, 2013.

Enclosed you will find a compact disk with documents responsive to your request for the February 4, 2013 deadline. We are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a)(5) ("inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the affected agency"). The documents EPA has withheld pursuant to this exemption include materials that would be protected under the attorney-client privilege and the executive deliberative process privilege.

An itemized list by category (including date range, number of documents, and approximate number of pages) of the withheld material along with the basis (i.e. exemption) for withholding is enclosed.

You may appeal this denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: <a href="https://doi.org/10.2009/nd.10.2



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ole Pye C. Garmer, Esq. Carthilocacok 130 Welfarm St., Name 300 Note: NY 10032-5326

(4) Hoodom of Information (vo. Request EPA-HQ-2012-99133).
(4) reviewed-1401-1401-0199-123.

This is in response to your Eventorn of Information and (ECLA) recovery or behalf of Furth Lance received on separation 12, 2012.

Per contierence call and count uncommenters, we agreed to be count all records assert andre to your POLA request ments 1-6, by Rebruary 4, 1013. We appreciate the extension of time to device and transmit error records related to items 1 and 2 to your POLA request. We agreed to record count records by behroury 30, 2013.

inclosed you will from a compact disk with documents responses to your request of permany 4, 2013 teadrine. We are unable to provide you with the documents, or principle of all intermed, anothing been determined to be exampt from mandature disclosure by around of a sealable by the role party of the unable of managery memorandums or letters which would can be evaluable by the role party of the train an agency in hitigation with the agency's and so if the intermediate their their in hitigation with the altern which would not be available by eithered present to this exception make we affected agency. The discontinistic has alternated and the presented made the

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Vou may appeal this decini to the Notional Procedum of Inform mon Critica, U.S. 12 No. 1 (1) A send Privacy Branco, 1200 Pennsy trains Avenue, N.W. (2812 In. Washington, D.C. Erster Frank Later States Postal Service may be delivered to 200 Pennsy trains Avenue, N.W. If you are submitting your appeal via band

delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004.

Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Becky Mitschele at (202) 286–6418 should you have any questions concerning this matter.

Sincerely,

Allison Wiedeman Chief, Rural Branch Water Permits Division

Enclosures:

Itemized list, excluding email records, by category of withheld material Compact disk (CD)

octivery neutron service, or overnight delibery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6-100, Washington D.C., 2000-1.

Your appeal must be made in writing, mailt must be submitted no agar than 30 calendar days from the date of this letter. The agency will not consider appeals received after the 50 catendar day limit. The appeal letter should indiade the POIA number listed above. For quickest processes and ling, the appeal letter and as envelope should be mailed "Treatment of Information and accordance."

Ploase contact Bodey Mitschele at (202) 286-6918 should you have any quastions around gliss matter.

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Itemized List, Excluding Email Records, by Category of Withheld Material

Item *	Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
A	5/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents, including briefing documents or notes during state conference calls, that refer or relate to the completeness, accuracy, or public accessibility of CAFO information maintained by states.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	146	293
В	2/1/2012 to 11/1/2012	Internal, pre-decisional drafts of documents that refer or relate to how EPA should gather CAFO information and EPA's progress on obtaining existing CAFO information.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	88	206
С	5/15/2012 to 7/30/2012	Internal, pre-decisional drafts of documents that refer or relate to the Memorandum of Understanding between EPA and the Association of Clean Water Administrators.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	18	39
D	10/15/2012 to 11/1/2012	Internal, pre-decisional drafts of briefing documents, desk statements, communication strategies, internal agency workgroup meeting materials, website revisions, Federal Register Notice versions, talking points, EPA office to office memoranda, and/or comment summary documents that refer or relate to the Agency's withdrawal of the proposed NPDES CAFO Reporting Rule.	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	222	3,264

<sup>\*</sup> Item column corresponds to the enclosed spreadsheet which shows document titles

Remixed List, Excluding Email Records, by Category of Withheld Materia

frem column corresponds to the enclosed spreadshoot which shows document littles



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OCT 1 6 2012

OFFICE OF WATER

Eve C. Gartner, Esq. Earthjustice 156 William St., Suite 800 New York, NY 10038-5326

RE: Freedom of Information Act Request HQ-FOI-01980-12

Dear Ms. Gartner:

This letter is a partial response to your Freedom of Information Act request submitted on September 12, 2012. You requested records related to the proposed CAFO Reporting Rule and the withdrawal of the proposed CAFO Reporting Rule announced on July 20, 2012.

During our conversation on September 19, you agreed to limit the scope of items 1, 2, and 5 in the request to records from October 14, 2011 onward. Additionally, you agreed to exclude EPA communications with Earthjustice from the scope of item 2. You also agreed to grant an extension for us to respond to your request to January 21, 2013.

The enclosed CD contains a number of documents we think are responsive to your request. Once you have had a chance to review them, we would like to speak with you to determine if the request can be further honed.

Please contact me at (202) 564-0744 or Becky Mitschele at (202) 564-6418 if you have any questions concerning this matter.

Sincerely.

George Utting

Acting Branch Chief, Rural Branch



# UNITED STATES ENVIRONMENDAL PROTECTION AGENCY WASHINGTON, D.C. 80400

OCT 1 8 2812

IO STOWN!

Five C. Garmer, Esq. Larth, uvlice 156 William St., Sune 800 Appl. Vork., IVY 10038-5316

RE-President of Information Act Request MQ-POI-910-12

June Ms. Gartner

This letter is a partial response to your Fraction of Information Act request submitted on September 12, 2012. You requested records related to the proposed CAFO Reporting Rule and the withdrawal of the proposed CAFO Reporting Rule amounced on July 20, 2012.

During our conversation on September 19, you agreed to limit the ecope of items 1, 2, an the request to records from October 14, 2011 powerd. Additionally, you agreed to exclude EPA communications with itemfusites from the scripe of term 2. You aire agreed to grant an extension for us to respond to your request to Junuary 21, 2013.

The enclosed CD contains a number of documents we think are responsive to your request. Once you have had a chance to review them, we would like an speak with you to determine if the request can be thether boned.

Picase contact me in (202) 564-0744 or Bocky Mirschele at 702) 564-6416. If you have now some concerning that matter

v I-monarel 2

Courge Utting

Acting Branch Chief, Kural Brunch.

From:

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>

Sent: Subject: Thursday, January 31, 2013 11:25 AM Conference Call Yesterday (1/30/13)

To:

Eve C. Gartner <egartner@earthjustice.org>

Cc:

Kupchan.Simma@epamail.epa.gov, Utting.George@epamail.epa.gov

Hello Eve,

Thank you with meeting with us today, January 30, 2013. Per our conference call, we agreed to transmit all releasable records responsive to your FOIA request for items 3 – 6 by Monday, February 4, 2013. This will include a table by category of the documents being withheld.

We also agreed to conduct the following actions, in exchange for which EPA's production of records responsive to items 1 and 2 in your FOIA request will be complete.

A. EPA asks its principal staff involved in developing the reporting rule or its withdrawal if they can recall any emails regarding the reporting rule submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemen's Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association.

B. EPA asks its principal staff involved in developing the reporting rule or its withdrawal if they can recall any emails exchanged with non-governmental organizations or individuals (such as agricultural industry representatives) or state personnel regarding:  $\hat{a} \in \phi$  The completeness, accuracy, or accessibility of state files, or  $\hat{a} \in \phi$  Individual facilities.

C. If there are emails fitting the description in A or B, above, EPA produces any such emails by February 20, 2013.

EPA will send a CD to EarthJustice by the dates specified above, and then will upload records into FOIAonline a few days later.

Thanks, Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

From:

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent:

Tuesday, December 04, 2012 12:52 PM

Eve C. Gartner <egartner@earthjustice.org>

Subject:

Earthjustice FOIA - CAFO Reporting

To:

Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hello Eve,

Thanks for speaking with us about Earthjustice's FOIA request for information related to the withdrawal of the proposed CAFO Reporting Rule.

We appreciated the opportunity to discuss EPA's partial response to the FOIA, which was sent on 10/16/12.

Per our conversation on Monday, December 3, 2012, we agreed to schedule a follow-up meeting in late January 2013. We currently are scheduled to have that meeting in the afternoon on January 30, 2013. The purpose of that meeting is to discuss EPA's progress on collecting state data and discuss the next steps for completing EPA's response.

In order to prepare for this call, we agreed that EPA will focus on identifying, collecting, and analyzing available CAFO information, including from state permitting authorities and some state departments of agriculture. In the meantime, we also have agreed that EPA does not need to send you any materials prior to the meeting on the 30th.

Please let me know if you have any questions or corrections to what we discussed.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency

Tel: 202.564.6418

From < Mischale Backy@epamail.epa.gov

a: "Eve C Gartner" <eganner@earthjusbcs.org>

Co - Utiling George@epervall.epa.gov> <Yeger Scott@enervall.epa.gov>

Kupchen Simme@epimaal npa gove

Sunt: vesday December 04, 2012 12 52 PM

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Thanks for spissioning with as about Earthyushores Pas FOIA request for information related to the withdrawallof the processed CARO Reporting Rule

We approximited the apportunity to discuss EPAès Ma partiel response to the FOIA, which was sent on 10/15/12

For our convexation on Monday December 5, 2012, we agreed to schedule a toticy-up meeting in late January 2013. We contently are scheduled to have that meeting in the attempon on January 30, 2013. The curpose of the meeting is to discuss EPASETINS progress on collecting state data and discuss the next steps for completing EPASETINS response.

In order to prepare for this call, we agreed that EPA will focus on identifying, collecting, and enalything evallable CARC information, including from state permitting authorities and some state propartments of agriculture. In the meeting on the meeting we also have agreed that EPA does not need to send you say materials prior to the meeting on the outs.

Elease let me know if you have any questions or corregions to what we discussed

Period Sector Mitachère Water Permital Division, OWM Le Environatental Protection Agency Let 202,654 §418 From:

<Mitschele.Becky@epamail.epa.gov>

To:

<egartner@earthjustice.org>

Cc:

<Yager.Scott@epamail.epa.gov>; <Kupchan.Simma@epamail.epa.gov>

Sent:

Friday, September 14, 2012 11:32 AM

Subject:

FOIA Request for Info related to CAFO Reporting Rule Withdrawal

To:

egartner@earthjustice.org

Cc:

Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Thanks,

Becky Mitschele **Physical Scientist** Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

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To: écontración entracé oros

Ve; < Yager Scott@epemeil eps.gov; < Kupchan.Simme@uponterior por your</p>

Sent: Friday, September 14, 2012 11,32 AM

Subject: FOIA Request for Info related to CAFO Reporting Rule Withdraws

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Hallo Mx. Eve Garlner.

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I would like to set up a conference call next Wednesday (9/19/12) from 4 pm (p.5 pm EST to discuss the scripe of the record request

Does the time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1681 ext 6222. Atternatively, if this does not work with your schedule, could you suggest a better timeframe?

AHNAHT

Becky Mitrohale Physical Scientist Water Fermitt Division, OWM U.S. Environmental Protection Agency

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent: To: Wednesday, April 24, 2013 12:43 PM

Cc:

Mitschele, Becky; Kupchan, Simma

Subject:

'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org follow up call

Dear Becky and Simma-

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claire Althouse from NRDC and they would like to participate as well.

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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<sup>\*</sup>please consider the environment before printing

From: Eve C Cartner [agartner@earthjustice.or

Sunt Wedningday, April 24, 2013-12 434

Cc: idevine@nrdc.org (ldevine@nrdc.org); caltinousnignrdc.or

Subject: follow up t

Dear Bedry and Simma -

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claim Atthouse from MRDC and they would like to participate as well

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155 William Street

Suite 800

New York, New York 10038

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Because the earth needs a good lawyer

The information contained in this issued making may be privileged, confidential and graphical from aucignam, if you are not the intermined making and the intermediate of containing and any and and are successed in the message in more privileged and any attaches sender by a containing the sender by a containing the message and any attachments.

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From:

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Kupchan.Simma@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;

Utting.George@epamail.epa.gov>

Sent:

Monday, February 04, 2013 5:42 PM

Attach: Subject: Spreadsheet with the documents withheld.xlsx; Partial Denial Letter to Earthjustice.pdf
Partial Denial Letter - FOIA Interim Response #2\_EarthJustice - All Responsive Documents Except

Email Records

200

Eve C. Gartner <egartner@earthjustice.org>

To:

Kupchan.Simma@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Utting.George@epamail.epa.gov

Cc:

Hi Eve.

Please find attached a letter in response to your FOIA Request as well as a list of documents withheld. You will be getting a CD with electronic records of all releasable documents, and I will be uploading these documents into FOIAonline.

We are working on compiling the email records per our previous email exchanges. Thank you again for working with us as we transmit all responsive email records to you in a few weeks. If you have any questions, please feel free to call.

(See attached file: Partial Denial Letter to Earthjustice.pdf)
(See attached file: Spreadsheet with the documents withheld.xlsx)

Thanks, Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency

Tel: 202.564.6418

rom: «Mitscheia Silichy@epemail.epa.gov»

(o: "Five C Garther Cogarthearth partitioning

Cc: Supplier Smith@epamail.epa.go." Yagar Scott@epamail.epa.go."

Utting George@apured oper gov>

Sent: Monday, February 04 2013 5 42 PM

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(See attached file. Spreadsheet with the documents withheld xlsx).

Franks. Scolly Mischele Water Permits Division, OWM J.S. Environmental Protection Agency. Fel. 202 Ser Auts. From:

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>;

<Yager.Scott@epamail.epa.gov>

Sent: Attach: Wednesday, October 17, 2012 4:50 PM Partial Response to 308 Rule FOIA.pdf

Eve C. Gartner <egartner@earthjustice.org>

Subject:

Partial Response to FOIA HQ-FOI-01980-12

To:

10.000 00.000 00.000

Cc:

Hello Eve.

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CAFO Reporting Rule.

Kupchan.Simma@epamail.epa.gov, Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th,2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

(See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks, Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

From Milachele Becky@epamallepa.gov

Sve C Germen segaronerges thjustics ord>

Co. - Kuponan Stimma@esemail aps. gov> - Utting Georga general aps. gov-

Yager Scott@eparrail.epa gov>

Sent: Wednesday, October 17, 2012 4 50 PM

ion: Partial Response by FOIA MQ-FOI 01986-12.

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Hallo F. a

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/See unuclied file Partial Response to 308 Rule FO**IA pdf**:

Thunks. Beddy Milsocele Walkr Permits Division OWM. U.S. Levendhantal Protection Agency.

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent: To:

Monday, April 29, 2013 10:04 AM Penman, Crystal; Mitschele, Becky

Subject:

RE: Background info for Meeting on 4/29

Hello-

I don't know anything about the agenda for this meeting. It is being set up by Becky Mitschele.

Eve

Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038

T: 212-845-7381 F: 212-918-1556 www.earthjustice.org

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From: Penman, Crystal [mailto:Penman.Crystal@epa.gov]

Sent: Friday, April 26, 2013 4:22 PM

To: Eve C. Gartner

Subject: Background info for Meeting on 4/29

Can you email any background information for Ellen to review for this meeting on Monday? Thank you.

Crystal Penman Office of Water 1201 Constitution Ave, NW Washington, DC 20004 202-564-3318 Penman.Crystal@EPA.gov

1

<sup>\*</sup>please consider the environment before printing

#### Megal, Scott

From: Eve C Cartner (egartner@partitipatide.c Sent: Moncay, April 29, 2013-10.04 AM Te. Penman Crustel Mitschele. Besky Subject: RE Reckground toto for Meeting on 403

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i don't know shything about the agenda for this meesing. It is being set up by Becky Mitschele

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From: Perman, Crystal [mailto:Penman,Crafaliteca.gov] Sant: Eriday, April 26, 2013 4:22 PM

for Eve C. Sarbret

Subject: Background lafe for Meeting on 4/29

Carryon erroll any background information for Election review for this meeting on Monday 2. Thank you.

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1,201 Constitution Ave. NW

Washington, Of 20004

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Performant Crystal ISBPA.cox

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Monday, April 22, 2013 3:14 PM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Wiedeman, Allison; Yager, Scott

Subject:

RE: CAFO FOIA - 2012-001337

Follow Up Flag: Flag Status:

Follow up Completed

Becky -

As we discussed, would you also send me the excel spreadsheet entitled "Spreadsheet with the documents withheld," which was on the Feb 4 disk, but not the April 4 disk?

Thank you,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

**Sent:** Thursday, April 18, 2013 4:19 PM

To: Eve C. Gartner

Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott

Subject: CAFO FOIA - 2012-001337

Hi Eve,

Please find attached two additional documents that are responsive to your FOIA request. These documents were inadvertently left off the amended disk. If you have any questions, please give me a call.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

<sup>\*</sup>please consider the environment before printing

Eve C Gertner [egarmer@earthjustice.org]

Monday, April 22, 2013 3:14 PM

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Kuponan Simma, Wildelman, Altison; Yager, Soc

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Sent: Thursday April 18, 2013 4:19 PM

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Please find attached two additional documents that are responsive to your FOIA request. These documents were nacularity left biff the amended district you have any ourstions; please give melancial.

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Physical Scientist

U.S. EPA, Office of Wastewater Management

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From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Monday, April 22, 2013 11:36 AM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Wiedeman, Allison; Yager, Scott

Subject:

RE: CAFO FOIA - 2012-001337

Thank you.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Thursday, April 18, 2013 4:19 PM

To: Eve C. Gartner

Cc: Kupchan, Simma; Wiedeman, Allison; Yager, Scott

Subject: CAFO FOIA - 2012-001337

Hi Eve,

Please find attached two additional documents that are responsive to your FOIA request. These documents were inadvertently left off the amended disk. If you have any questions, please give me a call.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

<sup>\*</sup>please consider the environment before printing

Eve C. Gartner [egartner@earthjustice.org]

Monday, April 22, 2013 11 38 AM

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Pieese find attached two additional documents that are responsive to your FOIA request. These documents were inacceptable left off the amended disk. If you have any questions, please one me a cult.

Thumks,

Becky Mitschele

Provided Scientist

U.S. EPA, Office of Wastewater Management

BING BRADON

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Monday, March 11, 2013 5:43 PM

To:

Mitschele, Becky

Subject:

RE: CAFO FOIA - Industry Correspondance and EPA's Response (Nancy Stoner Letter)

Thank you Becky.

Can you update me on the status of the release of the responsive emails. Per your email cut and pasted below, I had expected to receive these documents in late February. I'm not clear on whether a disk was lost in the mail, or if it was not sent.

Regards,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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\*please consider the environment before printing

On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" < Mitschele.Becky@epa.gov> wrote:

Hello Eve,

Per my voicemail, may I please have more time (two days) to send you the responsive emails? We transition over the weekend to a new email system and new workplace and is taking a lot of time.

Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

Thanks,

Becky Mitschele Physical Scientist US EPA, Office of Wastewater Management 202-564-6418 From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Monday, March 11, 2013 5:21 PM

To: Eve C. Gartner

Cc: Gilinsky, Ellen; Frace, Sheila; Hill, Randy; Nagle, Deborah; Frazer, Brian; Kupchan, Simma; Levine, MaryEllen;

WIEDEMAN, ALLISON; Utting, George; Yager, Scott; Bittleman, Sarah; Nguyen, Quoc

Subject: CAFO FOIA - Industry Correspondance and EPA's Response (Nancy Stoner Letter)

Hi Eve,

Please see attached the records related to your recent FOIA requests (# 2013-004082 and 2013-004070) for industry correspondence to Bob Perciasepe about EPA's release of CAFO information and EPA's subsequent response to the industry letter.

Thanks,
Becky Mitschele
U.S. Environmental Protection Agency
Office of Water, Office of Wastewater Management, Water Permits Division

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Wednesday, April 17, 2013 4:16 PM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject:

RE: Call to discuss CAFO FOIA

#### Becky and Simma -

In thinking back over our call, I realize there's an additional issue I need to raise with you. Could you give me a call, ideally today? I will not be in the office Thurs. or Fri.

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Tuesday, April 16, 2013 4:03 PM

To: Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: RE: Call to discuss CAFO FOIA

Would 3:30 pm work?

From: Eve C. Gartner [mailto:egartner@earthjustice.org]

Sent: Tuesday, April 16, 2013 4:00 PM

To: Mitschele, Becky

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: RE: Call to discuss CAFO FOIA

Hi Becky -

Is there any chance of doing the call tomorrow before 11, or between 2 and 5?

Thanks,

Eve

<sup>\*</sup>please consider the environment before printing

Eve C. Gartner
Staff Attorney
Earthjustice
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\*please consider the environment before printing

From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

**Sent:** Tuesday, April 16, 2013 3:57 PM **To:** Mitschele, Becky; Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: Call to discuss CAFO FOIA

Hi Eve,

Can we speak tomorrow at 11 am or Thursday at 12:30 pm to discuss the four documents?

I can call you directly, or I can set up a conference line since I know you want another person at EarthJustice to attend. Please let me know if one of these times work for you.

Thanks, Becky Mitschele US EPA, Office of Water 202-564-6418

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Tuesday, April 16, 2013 4:08 PM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject:

RE: Call to discuss CAFO FOIA

Yes, and you can just call my office. 212-845-7381.

Thank you.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
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F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.qov]

Sent: Tuesday, April 16, 2013 4:03 PM

To: Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: RE: Call to discuss CAFO FOIA

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**From:** Eve C. Gartner [mailto:eqartner@earthjustice.org]

Sent: Tuesday, April 16, 2013 4:00 PM

To: Mitschele, Becky

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: RE: Call to discuss CAFO FOIA

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Thanks,

Eve

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**Sent:** Tuesday, April 16, 2013 3:57 PM **To:** Mitschele, Becky; Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: Call to discuss CAFO FOIA

Hi Eve,

Can we speak tomorrow at 11 am or Thursday at 12:30 pm to discuss the four documents?

I can call you directly, or I can set up a conference line since I know you want another person at EarthJustice to attend. Please let me know if one of these times work for you.

Thanks, Becky Mitschele US EPA, Office of Water 202-564-6418

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Tuesday, April 16, 2013 4:00 PM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject:

RE: Call to discuss CAFO FOIA

Hi Becky -

Is there any chance of doing the call tomorrow before 11, or between 2 and 5?

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

**Sent:** Tuesday, April 16, 2013 3:57 PM **To:** Mitschele, Becky; Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject: Call to discuss CAFO FOIA

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Thanks, Becky Mitschele US EPA, Office of Water 202-564-6418

<sup>\*</sup>please consider the environment before printing

From: Eve C. Gartner (egontmer@martrijuetice.org)

Tuesday April 16, 2013 4,05 PM

MERCHAIR, ERCKY

Kupchan Simma: Yager Scott: Wiedeman, Allist

REI Call to discuss CAPO POIA

H Recky -

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Fram: Mischele, Bedw [mailtr: Hischele Bedomane.gov]

THE VELL CYON OF HIRE ADDRESS LINES

To: Mitschele, Badiny, Eve C. Gartner

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Subjects Call to distress CAFO FOTA

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Cenicall you directly, or I can set up a conference line since I **mow** you want another person at Earthurstice to attend

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Becaley IIII eschedu-

THE AN Office of Water

ethalias uni

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Thursday, May 09, 2013 3:33 PM

To:

Mitschele, Becky

Subject:

RE: Clarifying Scope of Correspondance Records

Becky -

We would like to see those emails and correspondence.

Thank you.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
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From: mitschele.becky@epa.gov [mailto:mitschele.becky@epa.gov]

Sent: Thursday, May 09, 2013 2:44 PM

To: Eve C. Gartner

Subject: Clarifying Scope of Correspondance Records

05/09/2013 02:41 PM

FOIA Request: EPA-HQ-2013-004070

Hi Eve,

We are working on your FOIA request referenced above as well as 2013-004082.

I wanted to check that if it would be OK to exclude emails and correspondance between EPA and NRDC/Pew.

Thanks,

Becky Mitschele

<sup>\*</sup>please consider the environment before printing

A Li doltoudina www.

From:

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov>

Cc:

<Utting.George@epamail.epa.gov>;<Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent: Subject: Monday, December 10, 2012 5:29 PM RE: Earthjustice FOIA - CAFO Reporting

Becky and Team -

Thanks for this summary of our conversation. The only item I would add to your email is that we agreed to postpone a discussion of how to handle emails and documents that EPA asserts are privileged and/or deliberative (some of which may be emails).

Best,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
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Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, December 04, 2012 12:53 PM

To: Eve C. Gartner

Cc: Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov; Kupchan.Simma@epamail.epa.gov

Subject: Earthjustice FOIA - CAFO Reporting

Hello Eve,

Thanks for speaking with us about Earthjustice's FOIA request for information related to the withdrawal of the proposed CAFO Reporting Rule.

We appreciated the opportunity to discuss EPA's partial response to the FOIA, which was sent on 10/16/12.

Per our conversation on Monday, December 3, 2012, we agreed to schedule a follow-up meeting in late January 2013. We currently are scheduled to have that meeting in the afternoon on January 30, 2013. The purpose of that meeting is to discuss EPA's progress on collecting state data and discuss the next steps for completing EPA's response.

In order to prepare for this call, we agreed that EPA will focus on identifying, collecting, and analyzing available CAFO information, including from state permitting authorities and some state departments of agriculture. In the meantime, we also have agreed that EPA does not need to send you any materials prior to the meeting on the 30th.

Please let me know if you have any questions or corrections to what we discussed.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Monday, March 04, 2013 3:14 PM

To:

Mitschele, Becky

Subject:

RE: Final Response - Emails - CAFO FOIA

#### Dear Becky -

We have not received the CD with emails responsive to our FOIA Request No. HQ-FOI-01980-12, which, per the email from you below, I understood you would be sending out on February 21<sup>st</sup>. Was the CD actually sent? Thank you very much,

**Eve Gartner** 

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Eve C. Gartner

Sent: Tuesday, February 19, 2013 2:00 PM

To: Mitschele, Becky

Subject: Re: Final Response - Emails - CAFO FOIA

Yes, that would be fine.

Eve

On Feb 19, 2013, at 1:13 PM, "Mitschele, Becky" <Mitschele.Becky@epa.gov> wrote:

Hello Eve,

Per my voicemail, may I please have more time (two days) to send you the responsive emails? We transition over the weekend to a new email system and new workplace and is taking a lot of time.

Can I please mail out the CD with the respective emails on Thursday? Please let me know as soon as possible if this would be OK

<sup>\*</sup>please consider the environment before printing

Thanks,

Becky Mitschele
Physical Scientist
US EPA, Office of Wastewater Management
202-564-6418

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156 William Street
Sure 800
Tall 485-7381
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Street 988 1556

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Sent:

Tuesday, February 19, 2013 2:00 PM

To:

Mitschele, Becky

Subject:

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Thanks,

Becky Mitschele Physical Scientist US EPA, Office of Wastewater Management 202-564-6418

From Sunt: To:

Eve C. Garmer (agartner@earthjustice.cn Tuesday, February 19, 2013 2:00 PM Attachaie, Backy

30 aligner

Re Final Response - Emelis - CARO FOIA

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Becky Minischele
Thy scal Scientist
US SPA, Office of Wastewater Management
On Sea Carte

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov>

Sent:

Sunday, September 16, 2012 5:20 PM

Subject: RE: FOI

RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Mitschele

Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response.

Eve Gartner

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-791-1881 ext. 8222
F: 212-918-1556
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\*please consider the environment before printing

From: Becky Mitschele [Mitschele.Becky@epamail.epa.gov]

Sent: Friday, September 14, 2012 12:32 PM

To: Eve C. Gartner

Cc: Scott Yager; Simma Kupchan

Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Thanks,

Becky Mitschele Physical Scientist Water Permits Division, OWM

U.S. Environmental Protection Agency

Tel: 202.564.6418

ello Ms. Minschele /ednasday at 4 ET works well for me. I will be at this number in your email. Many thanks for your rely resonate.

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om: Bocky Mitschele [Mitschele Backy//gepamail.epa.gov]
ent Friday, September 14, 2017 12:37 PM
Eve C. Gartner

Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

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a denoted a

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent:

Tuesday, September 25, 2012 4:46 PM

Subject:

RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

To:

"Eve C. Gartner" <egartner@earthjustice.org>

\_

Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Cc:

Eve.

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Item 4. "All records, including but not limited to, all communications and records identifying, discussing, mentioning, describing, reporting or analyzing, the July 2012 memorandum of understanding…†will be limited to communications between the EPA and ACWA.

Item 5. "All records relating to how EPA will obtain information about CAFOs in states for which current site-specific information about CAFOs is not available on the internet…†will be limited to records from 10/14/11 onward.

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Lastly, you should have received notice that your FOIA request has been granted the fee waiver. This means that you will not be billed for any of the costs to fulfill this FOIA request. I had misinformation about the 100 hour-cut off and apologize for any confusion.

Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

"Eve C. Gartner" ---09/16/2012 06:21:44 PM---Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. M

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA
Date: 09/16/2012 06:21 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

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Eve C. Gartner
Staff Attorney
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Sent: Friday, September 14, 2012 12:32 PM

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Physical Scientist
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov>

Cc:

<Utting.George@epamail.epa.gov>;<Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent: Thursday, September 27, 2012 3:04 PM

Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Dear Becky -

Thank you for this email and my apologies for the delay in getting back to you. We are in agreement with respect to the limitations for Items 1, 2, and 5, and regarding the extensions of time for response. With respect to Item 4, however, my notes do not reflect that we agreed to any limitation with respect to this request. Our intent with respect to Item 4 was to obtain not only communications between EPA and ACWA, but also any other records in the possession of EPA that discuss or analyze the July 2012 Memorandum of Understanding between EPA and ACWA. I apologize if we had a miscommunication. Should we get back on the phone to discuss item 4?

Also, thank you very much for letting me know about the fee waiver.

Many thanks, means assemble of CPV NOT me benefit already and welves of some

Eve

Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038 T: 212-791-1881 ext. 8222

F: 212-918-1556 www.earthjustice.org

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From: Becky Mitschele [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, September 25, 2012 5:46 PM

To: Eve C. Gartner

Cc: George Utting; Scott Yager; Simma Kupchan

Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Eve.

Thanks for speaking with us about the FIOA request for information related to the CAFO Reporting Rule final action and proposal.

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From: "Eve C. Gartner" <a href="mailto:searthjustice.org">eartner@earthjustice.org</a> To: Becky Mitschele/DC/USEPA/US@EPA Date: 09/16/2012 06:21 PM

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Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038 T: 212-791-1881 ext. 8222 F: 212-918-1556 www.earthjustice.org

Because the earth needs a good lawyer

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent:

Friday, October 05, 2012 3:17 PM

Subject:

RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

"Eve C. Gartner" <egartner@earthjustice.org>

To:

Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Cc:

Hi Eve.

Thanks for your reply.

We are on schedule with the first set of documents. We are discussing the scope of item #4 internally, and we will keep you in the loop on whether we need to discuss it further with you.

I will be out of the office next week. If you have any questions, George, Simma, or Scott our ORISE fellow, (emails above) can answer any questions while I am out of the office as I will be checking email sporadically.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

"Eve C. Gartner" ---09/27/2012 04:04:19 PM---Dear Becky â€" Thank you for this email and my apologies for the delay in getting back to you. We are

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To: Becky Mitschele/DC/USEPA/US@EPA

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Sent: Tuesday, September 25, 2012 5:46 PM

To: Eve C. Gartner

Cc: George Utting; Scott Yager; Simma Kupchan

Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

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Per our conversation on Wednesday, 9/19/12, we discussed limiting the scope of the FOIA request by the following:

Item 1. "All records, including communications, shared or otherwise maintained between EPA and any other governmental agency…†will be limited to records from 10/14/11 onward. Item 2. "All records reflecting any communication, written or verbal, between the EPA and any private party, corporation or non-profit organization…†will be limited to records from 10/14/11 onward and will exclude EPA communications with Earthjustice. Item 4. "All records, including but not limited to, all communications and records identifying, discussing, mentioning, describing, reporting or analyzing, the July 2012 memorandum of understanding…†will be limited to communications between the EPA and ACWA. Item 5. "All records relating to how EPA will obtain information about CAFOs in states for which current site-specific information about CAFOs is not available on the internet…†will be limited to records from 10/14/11 onward.

You also kindly agreed to grant an extension for our response. We agreed that we would share the records in two phases. The first deadline, 10/17/12, would include the "key" documents that we think are most responsive to your request. The second deadline, 1/21/13, would be the comprehensive response. We also agreed to check in with each other after you have a chance to review the documents shared on 10/17/12 to discuss potentially further honing the remaining request.

Lastly, you should have received notice that your FOIA request has been granted the fee waiver. This means that you will not be billed for any of the costs to fulfill this FOIA request. I had misinformation about the 100 hour-cut off and apologize for any confusion.

Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

"Eve C. Gartner" ---09/16/2012 06:21:44 PM---Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. M

From: "Eve C. Gartner" <<u>egartner@earthjustice.org</u>>
To: Becky Mitschele/DC/USEPA/US@EPA
Date: 09/16/2012 06:21 PM
Subject: RE: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Mitschele Wednesday at 4 ET works well for me. I will be at the number in your email. Many thanks for your timely response. Eve Gartner

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-791-1881 ext. 8222
F: 212-918-1556
www.earthjustice.org

Because the earth needs a good lawyer

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\*please consider the environment before printing

From: Becky Mitschele [Mitschele.Becky@epamail.epa.gov]

Sent: Friday, September 14, 2012 12:32 PM

To: Eve C. Gartner

Cc: Scott Yager; Simma Kupchan

Subject: FOIA Request for Info related to CAFO Reporting Rule Withdrawal

Hello Ms. Eve Gartner,

I have received your FOIA request about records pertaining to the CAFO Reporting Rule proposal and final action. I will be coordinating the collection of such records.

I would like to set up a conference call next Wednesday (9/19/12) from 4 pm to 5 pm EST to discuss the scope of the record request.

Does this time work for you? If so, we can call you directly at the number provided in the request - (212) 791-1881 ext 8222. Alternatively, if this does not work with your schedule, could you suggest a better timeframe?

Tel 202,584,6418

Eve C. Certnert —06/16/2012 06/21/44 PM—Hallo Vis. Milachele Wednesday at 4 ET works well for me. I will be at the unmber in your eroal. M.

from Trive C. Carther " demilos papes incustors and to Berry Minister Application (Sept. 1944).

sello Ma Mitachele. Redomaday at a ET works well for me I will be at the number in your email Many danks for your timely response

Staff Attorney
Staff Attorney
Sarthjustice
136 William Street
Swite 800
New York, New York 18038
T 212-131-1881 ext. 8323
F 212-91-1881 ext. 8323

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From Becky Michabele (Michaele.De kydegamail.epa.gov) Sent: Friday, Saptember 14, 2012 1:37 PM Fo: Eve C. Gartner Co: Scott Tager: Simma Rupchan \* Subject: FOIA Request for Info veloced to CAFO Reporting

Hello Ms Eve Cartner,

I have raceived your FOIR request about receptds pertaining to the CAFO Reporting Sule proposel and finel aution. I will be coerdinating the collection of such

I would like to set up a conference call mast Mednesday (9/15/12) from 4 pm to 5 pm RET to distuse the scope of the record request.

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From:

Eve C. Gartner [egartner@earthjustice.org]

Sent: To:

Wednesday, May 01, 2013 5:10 PM

Cc:

Mitschele, Becky; Kupchan, Simma

'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott

Subject:

RE: follow up call

### Dear Becky and Simma -

In light of the second amended responsive disk that we received today, we and NRDC no longer think it is necessary to have the call tomorrow. Let us know if EPA sees that differently.

Thank you,

Eve

Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038 T: 212-845-7381 F: 212-918-1556

www.earthjustice.org

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\*please consider the environment before printing

From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Wednesday, April 24, 2013 1:12 PM To: Eve C. Gartner; Kupchan, Simma

Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott

Subject: RE: follow up call

Hi Eve,

Yes we are available to meet with you and NRDC. Would sometime between 1 and 4 pm work next Thursday (5/1/13)? If not, could you let us know when a good time is for you both.

Thanks, Becky Mitschele **US EPA** 202-564-6418

From: Eve C. Gartner [mailto:egartner@earthjustice.org]

Sent: Wednesday, April 24, 2013 12:43 PM

To: Mitschele, Becky; Kupchan, Simma

Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org

Subject: follow up call

Dear Becky and Simma-

Are you available for a follow-up to our conversation from last Wednesday? I have discussed this with Jon Devine and Claire Althouse from NRDC and they would like to participate as well.

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
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From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Wednesday, April 24, 2013 2:05 PM

To:

Mitschele, Becky; Kupchan, Simma

Cc:

'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott

Subject:

RE: follow up call

How about 3:00 ET on Thursday 5/2? Will you circulate a call-in number?

Thanks,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

**Sent:** Wednesday, April 24, 2013 1:12 PM **To:** Eve C. Gartner; Kupchan, Simma

Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org; Wiedeman, Allison; Yager, Scott

Subject: RE: follow up call

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Thanks, Becky Mitschele US EPA 202-564-6418

From: Eve C. Gartner [mailto:egartner@earthjustice.org]

**Sent:** Wednesday, April 24, 2013 12:43 PM **To:** Mitschele, Becky; Kupchan, Simma

Cc: 'jdevine@nrdc.org' (jdevine@nrdc.org); calthouse@nrdc.org

Subject: follow up call

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Thanks,

Eve

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\*please consider the environment before printing

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Monday, April 29, 2013 4:50 PM

To:

Mitschele, Becky

Subject:

RE: Meeting about CAFO FOIA

Becky -

Is this meeting now permanently canceled, or do you anticipate trying to reschedule it?

Thank you.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Thursday, April 25, 2013 12:59 PM

To: Eve C. Gartner

Subject: Meeting about CAFO FOIA

Hi Eve,

I was trying to set something up this afternoon, but management has been called away. Do you have time on Monday for a quick meeting?

Becky Mitschele Physical Scientist U.S. EPA, Office of Wastewater Management (202) 564-6418

<sup>\*</sup>please consider the environment before printing

Evs.C. Cartner egartner@earthjublice.org

Manday, April 29, 2013 4 50 PM

Witschels, Beory

t: RS Meeting about CAFO FOL

Becky

is this meeting now permanently canceled, or do you anticipate trying to reschedu

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Premi Mischele, Bedoy [mallto:Milpshele.Beday@epa.gov]

Semila Tribrisday, April 25, 2013 12139 PM

Ter Eve C. Gartner

Subject: Necting about CARD POIA

BVB IH

was trying to set something up this afternoon, but management has been called away. Do you have time on Monday, for a pulch meeting?

euloy Mitschele

Physical Scientist

J.S. EPA, Office of Wastewater Management

Door Sea 64 B

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Thursday, April 25, 2013 1:31 PM

To:

Mitschele, Becky

Subject:

RE: Meeting about CAFO FOIA

Sure. Anytime other than 11-12.

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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To: Eve C. Gartner

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Becky Mitschele Physical Scientist U.S. EPA, Office of Wastewater Management (202) 564-6418

From: Eve C. Gartner (ogartver@gartnjustice.org

Sent: 1 Nursday, April 20, 2013 13 Nijschele, Becky

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Starf Attorismy Earthjustics 156 William Street

New York, New York 20028

7 212 MS 7381 F 212 218 1556

www.earthinst.com.one

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From: Mischele, Bedry [malifo:Mischele,Bedry@cpa.gov]

Sent: Trursday, April 25, 2013 12:59 PM

subtrects Meeting about CAFO FOIA

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was trying to set something up this afternoon, but management has been called away. Do you have time on Monday, for outer meeting?

Becky Missingle

Physical Scientist

U.S. EPA, Office of Wastewater Management

(202) 554 541.5

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Thursday, March 14, 2013 5:18 PM

To:

Mitschele, Becky

Cc:

Wiedeman, Allison; Kupchan, Simma

Subject:

RE: New FOIA requests - Release of CAFO records in response to FOIA Request

### Dear Becky -

I'm sorry for my delay in responding to your email. You are correct that our FOIA requests (2013-004070 and 2013-004082) seek the records you describe below. With the caveat that your use of the term correspondence includes all records (as that term is used in FOIA) reflecting communications.

In addition to those records, item 4 of our request seeks any other FOIA requests for records and responses, relating to the CAFO Reporting Rule or its withdrawal received by EPA since July 20, 2012. We are only seeking the correspondence between EPA and the FOIA requester, not the responsive documents. You need not release to us Earthjustice's own correspondence or responses to it.

Thank you very much, Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556
www.earthjustice.org

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Thursday, March 14, 2013 9:21 AM

To: Eve C. Gartner

Cc: Wiedeman, Allison; Kupchan, Simma

Subject: New FOIA requests - Release of CAFO records in response to FOIA Request

Hello Eve,

In follow-up to your conversation with Ellen Gilinski, can you please confirm that EPA will complete FOIA requests (2013-004070 and 2013-004082) by releasing the following records:

<sup>\*</sup>please consider the environment before printing

From 9/1/2012, provide all correspondence between EPA and outside parties that discuss EPA receiving a FOIA request from EarthJustice (2012-001337) and a FOIA request from NRDC/Pew (2013-001516). Such correspondence would include EPA's correspondence with state permitting authorities and agriculture industry groups providing notification that the Agency released records related to the data collection effort as well as any incoming requests to review the documents EPA released.

From 2/15/13 to 2/28/13, provide all correspondence between EPA and outside parties that discuss EPA's responses to the FOIA request from EarthJustice (2012-001337) and the FOIA request from NRDC/Pew (2013-001516). This includes the documents EPA previously sent regarding industry's concerns about the release of information as well as the Agency's response to the industry letter.

Thanks,
Becky Mitschele
Physical Scientist
U.S. EPA, Office of Wastewater Management
(202) 564-6418

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov>

Cc:

<Kupchan.Simma@epamail.epa.gov>; <Utting.George@epamail.epa.gov>;

<Yager.Scott@epamail.epa.gov>

Sent: Subject: Thursday, October 18, 2012 8:38 AM RE: Partial Response to FOIA HQ-FOI-01980-12

Dear Becky -

Thank you for the heads up about the CD. I will be out of the office for much of the week of Nov. 12<sup>th</sup>, but would be available on Nov. 15<sup>th</sup> and could talk anytime that day. Is there a time that day that works for you? Best,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556

www.earthjustice.org

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Wednesday, October 17, 2012 5:51 PM

To: Eve C. Gartner

Cc: Kupchan.Simma@epamail.epa.gov; Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov

Subject: Partial Response to FOIA HQ-FOI-01980-12

Hello Eve,

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CAFO Reporting Rule.

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th,2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

<sup>\*</sup>please consider the environment before printing

## (See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency

Tel: 202.564.6418

1/9/2014

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

<Utting.George@epamail.epa.gov>; <Yager.Scott@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Sent:

Thursday, October 18, 2012 11:55 AM

Subject:

RE: Partial Response to FOIA HQ-FOI-01980-12

To:

"Eve C. Gartner" <egartner@earthjustice.org>

Cc:

Utting.George@epamail.epa.gov, Yager.Scott@epamail.epa.gov, Kupchan.Simma@epamail.epa.gov

Hi Eve.

Would 4 - 5 pm on the Nov. 15th work? We can use EPA's conference line 1-866-299-3188, code 202-564-6418, if this time works.

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

"Eve C. Gartner" ---10/18/2012 09:39:34 AM---Dear Becky - Thank you for the heads up about the CD. I will be out of the office for much of the w

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA
Cc: Simma Kupchan/DC/USEPA/US@EPA, George Utting/DC/USEPA/US@EPA, Scott Yager/DC/USEPA/US@EPA
Date: 10/18/2012 09:39 AM

Subject: RE: Partial Response to FOIA HQ-FOI-01980-12

#### Dear Becky –

Thank you for the heads up about the CD. I will be out of the office for much of the week of Nov. 12<sup>th</sup>, but would be available on Nov. 15<sup>th</sup> and could talk anytime that day. Is there a time that day that works for you? Best,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038

T: 212-845-7381 F: 212-918-1556 www.earthjustice.org

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Wednesday, October 17, 2012 5:51 PM

To: Eve C. Gartner

Cc: Kupchan.Simma@epamail.epa.gov; Utting.George@epamail.epa.gov; Yager.Scott@epamail.epa.gov

Subject: Partial Response to FOIA HQ-FOI-01980-12

Hello Eve.

We have mailed our partial response to the FOIA requesting copies of records related to the proposal and withdrawal of the CAFO Reporting Rule.

Please find attached the cover letter that will be enclosed with the CD that we are mailing. Once you have had a chance to review the documents, we can set up a meeting to discuss next steps.

I was thinking sometime during the week of November 12th,2012 before the Thanksgiving Holiday, but feel free to counter with a timeframe that works best for you.

(See attached file: Partial Response to 308 Rule FOIA.pdf)

Thanks,
Becky Mitschele
Water Permits Division, OWM
U.S. Environmental Protection Agency

Tel: 202.564.6418

"Eve C. Gartner" <egartner@earthjustice.org>

To: Sent:

<Mitschele.Becky@epamail.epa.gov> Tuesday, November 13, 2012 6:18 PM

Subject:

RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

Hi Becky -

It would be best for me to postpone the call until Nov. 28 or later. Would that work for you?

Thanks, Eve

Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038 T: 212-845-7381

F: 212-918-1556 www.earthjustice.org

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, November 13, 2012 9:04 AM

To: Eve C. Gartner

Subject: Reschedule our Thursday Meeting - FIOA for CAFO data?

Hi Eve,

Would it be possible to reschedule our Thursday meeting as I will be working on Hurricane Sandy Response efforts Thursday - Sunday?

I am in the office the following week on 11/19 and 11/20 if you have an hour to touch base on one of those days?

Thanks, Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency

Tel: 202.564.6418

rom: "Eve C. Ganner" regerhar@earthjustice orga

Saut: Triaxday Newamber 13 2012 R-18 PM

Sent: Unsday November 13, 2012 of 15 PM
Subtant: PE Reschweisle auf Thursday Moother FICA for CAPO data:

- value 8 octov -

It would be best for me to postpone the call until Nov. 28 or later. Would that work my your

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From: Mischele.Bedry@epameil.epa.gov [meilto:Mischele.Bedry@epamail.epa.gov]

Test Line C. Carlage

Subfact: Reschedule our Thursday Meeting - FIGA for CAFO date?

ev9 iH

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i am in the office the following week on 11/19 and 11/20 if you have an nour to louce base on one of those days

i marina, Seciny Mit

Water Parmitte Divinion OVMM

U.S. Environmental Protection Agency

Tel 202 564 6418

<Mitschele.Becky@epamail.epa.gov>

To: Sent: "Eve C. Gartner" <egartner@earthjustice.org> Wednesday, November 14, 2012 2:56 PM

Subject:

RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

"Eve C. Gartner" <egartner@earthjustice.org>

To:

Thanks, Eve.

We can try to schedule something early in December. Would 12/3 or 12/17 work? Feel free to provide a time and/or date.

Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

"Eve C. Gartner" ---11/13/2012 06:18:25 PM---Hi Becky - It would be best for me to postpone the call until Nov. 28 or later. Would that work for

From: "Eve C. Gartner" <egartner@earthjustice.org>

To: Becky Mitschele/DC/USEPA/US@EPA

Date: 11/13/2012 06:18 PM

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Thanks,

Eve

Eve C. Gartner Staff Attorney Earthjustice 156 William Street Suite 800 New York, New York 10038

T: 212-845-7381 F: 212-918-1556

www.earthjustice.org

#### Because the earth needs a good lawyer

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

<sup>\*</sup>please consider the environment before printing

From. < Witterheie Becky@epumail.aga.gov

"Bya C. Gartner" <egarmer@earthjustice.co

Suislect: RE Reschedule our Thursday Missing - FIOA for CAFO date?

size software eighentages remail 2 m/3"

Chantes Eve

We can by to schedule something early to December. Would 12/3 or 12/17 work? First free to provide a time

Becky Witschele

Water Permilii Division: OWM

U.S. Environmental Protection Agency

Tel 202 Sea BA18

"Eval C. Gertner" — 11/13/2012 06 18:25 PM — H. Bedky - It would be best for me to postcone the deficient; Nov. 8 or late: Weblic that work for

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Chief Hitts (2013) 06:13 PTM

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your exception commonwer tell recovery with any

From: Mitschele, Becky@opamail.eps.cov Fracitio Mitschele, Bedov@epamail.eps.cov

<Mitschele.Becky@epamail.epa.gov>

To:

"Eve C. Gartner" <egartner@earthjustice.org> Wednesday, November 14, 2012 4:28 PM

Sent: Subject:

RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

"Eve C. Gartner" <egartner@earthjustice.org>

To

Thank you, Eve. I set up the meeting invite, but in case you can't see the call in information is:

Call in #: 1-866-299-3188; code 202-564-6418

Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

"Eve C. Gartner" ---11/14/2012 03:24:46 PM---Becky â€" Can we talk at 2 pm ET on 12/3?

From: "Eve C. Gartner" <egartner@earthjustice.org>
To: Becky Mitschele/DC/USEPA/US@EPA

Date: 11/14/2012 03:24 PM

Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

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Can we talk at 2 pm ET on 12/3?

Thanks,

Eve

From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Wednesday, November 14, 2012 2:56 PM

To: Eve C. Gartner

Subject: RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

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Date: 11/13/2012 06:18 PM

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From: Mitschele.Becky@epamail.epa.gov [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, November 13, 2012 9:04 AM

To: Eve C. Gartner

Subject: Reschedule our Thursday Meeting - FIOA for CAFO data?

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Water Permits Division, OWM
U.S. Environmental Protection Agency
Tel: 202.564.6418

<sup>\*</sup>please consider the environment before printing

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov> Wednesday, November 14, 2012 7:14 PM

Sent: Subject:

RE: Reschedule our Thursday Meeting - FIOA for CAFO data?

Thank you.

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038

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[cid:1\_\_=0ABBF025DFE6755D8f9e8a93@epamail.epa.gov]"Eve C. Gartner" ---11/14/2012 03:24:46 PM---Becky – Can we talk at 2 pm ET on 12/3?

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meilte. Mischele Becky mepantal opa you

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Recicy Whashele

Water Permits Division, O.W.M.

U.S. I-nvironmental Protection Agency

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From:

"Eve C. Gartner" <egartner@earthjustice.org>

To:

<Mitschele.Becky@epamail.epa.gov>; <Utting.George@epamail.epa.gov>;

<Kupchan.Simma@epamail.epa.gov>

Cc: Sent: <Yager.Scott@epamail.epa.gov> Tuesday, January 29, 2013 4:15 PM

Subject:

RE: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-

299-3188; code 202-564-6418)

Hi-

Do you want to move this call to 2 or 2:30? I understood from Simma that we were moving it to 2:30.

Eve

----Original Appointment----

From: Becky Mitschele/DC/USEPA/US [mailto:Mitschele.Becky@epamail.epa.gov]

Sent: Tuesday, January 29, 2013 4:15 PM

To: Eve C. Gartner; George Utting/DC/USEPA/US; Simma Kupchan/DC/USEPA/US

Cc: Scott Yager/DC/USEPA/US

Subject: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188;

code 202-564-6418)

When: Wednesday, January 30, 2013 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: call info: 1-866-299-3188; code 202-564-6418

<< File: ATT00001.htm >> << File: c161448.ics >>

"Eve C. Gartner" <egartner@earthjustice.org>

To: < Mischele Becn, Repainall ega govo < Utiling George@epamail ega govo.

< Kupchan, Simma@epamail.epa.gov>

c: < Yager Scott@apamail.epa.gov>

Sent: Tuesday January 29 2013 4:15 PM

Subject: RE Rescireduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info 1-895

299-3168 code 202-564-8418)

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iverna: Bector Mitschald DC/USEPA/US (mailto: Mitschalau Bector (the pamail.apa.gov)

Sent: Tresday, January 29, 2013 5:15 PM

To: Eve C. Galdner; George Utiling/DC/USEPA/US; Simma Kupchan/DC/USEPA/US

Cat Scott Yages/DC/USEFA/US

Sungect: Restrictuled: FOLA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-806-299-3189;

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Witnesses call info: 1-856-299-3188: code 202-564-6418

ce File: AFTGGGGL htm >> << File: c163448 (cs >>

From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Thursday, April 04, 2013 12:27 PM

To:

Mitschele, Becky

Cc:

Kupchan, Simma; Yager, Scott; Wiedeman, Allison

Subject:

RE: your message

Becky -

Can you please provide me with an update on when we will receive the disk of responsive emails per our correspondence below?

Thank you,

Eve

Eve C. Gartner
Staff Attorney
Earthjustice
156 William Street
Suite 800
New York, New York 10038
T: 212-845-7381
F: 212-918-1556

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From: Mitschele, Becky [mailto:Mitschele.Becky@epa.gov]

Sent: Tuesday, March 12, 2013 11:37 AM

To: Eve C. Gartner

Cc: Kupchan, Simma; Yager, Scott; WIEDEMAN, ALLISON

Subject: RE: your message

Thanks, Eve.

I will provide an update soon.

Thanks, Becky Mitschele U.S. EPA

**From:** Eve C. Gartner [mailto:egartner@earthjustice.org]

**Sent:** Tuesday, March 12, 2013 11:31 AM **To:** Mitschele, Becky; Mitschele, Becky

Subject: your message

#### Dear Becky -

I received your message and appreciate your getting back to me. I am sorry you've been sick. There's no need to talk, but can you let me know once you've mailed me the disk with the responsive emails? If the disk will be mailed later than early next week, can you provide me with a projection on when it will be mailed?

Many thanks,

Eve

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From:

Eve C. Gartner [egartner@earthjustice.org]

Sent:

Tuesday, January 29, 2013 4:16 PM

To:

Mitschele, Becky; Utting, George; Kupchan, Simma

Cc:

Yager, Scott

Subject:

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1-866-299-3188; code 202-564-6418)

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Sent: Tuesday, January 29, 2013 4:15 PM

To: Eve C. Gartner; George Utting/DC/USEPA/US; Simma Kupchan/DC/USEPA/US

Cc: Scott Yager/DC/USEPA/US

Subject: Rescheduled: FOIA with Earth Justice - CAFO Data (Jan 30 02:00 PM EST in call info: 1-866-299-3188; code

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When: Wednesday, January 30, 2013 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: call info: 1-866-299-3188; code 202-564-6418

<< File: ATT00001.htm >> << File: c161448.ics >>

Sent:

Eve C Gertrer (egertrer@enthjusbo

Miterhale Region Litting Comme Line

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Mitschele Beoley, Othing Issurge; Kurpchan, Simma Vacer, Scott

Subject:

REI Rescheduled: FOIA with Earth Justice - CAFO (Jata (Jan 30 02 00 PM EST in call in)

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From: Bedor Mitchele/DO/USEPA/US I mailto: Mitsonale Bedovilheremail.eov.gov/

Sout: Tuesday, January 29, 2013 4:15 PM

To: Eve C. Garrner, George Utting/DC/USEPA/US; Simma Kupchan/DC/USEPA/US

Cost Scott Yager/DO/USEPA/US

Subject: Rescheduled, FOTA with Earth Justice - CAFO Data (Jan 30 02:00 PM SST in call info: 1-856-299-3138) code

When: Wednesday, January 30, 2013 2300 PM-3:00 PM (UFC-05:00) Baster ↑ Time (US 冬 Carade

Wheres call into: 1 855-299-3188; code 202-564-6418

-c. [16: ATTO 001 htm >> >6 File: c151446 lct >:

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Sent:

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Thanks, Becky Mitschele Water Permits Division, OWM U.S. Environmental Protection Agency Tel: 202.564.6418

1/9/2014

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Water Permits Division, OWM
U.S. Environmental Protection Agency

From:

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To: Subject:

your message

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Www.c.athjustice.gse

Security the earth theads a good lawyer

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Commission of the Aller Aller Annual Property of the Annual Conference of the Confer





May 6, 2013

Becky Mitschele
U.S. Environmental Protection Agency
Office of Water
Mail Code 4203M
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Freedom of Information Act Response #2013-001516

Dear Ms. Mitschele:

This letter is in response to a letter dated April 30, and received May 3, 2013, from Allison Wiedeman, Chief of the Rural Branch of the Office of Wastewater Management. The letter requests that, with respect to material previously produced under the Freedom of Information Act, the Natural Resources Defense Council "return the previously released disks (from the January 31 and April 4 release) and that any copy of electronic or paper files of the January 31 or April 4 release be destroyed."

NRDC sought information concerning industrial livestock operations because we believe that Americans, in particular those people who live near, or share waterways with, concentrated animal feeding operations have a right to know about these facilities. Specifically, people deserve to know whether the Environmental Protection Agency has sufficient information about these facilities to develop appropriate pollution control requirements for them. And, people are entitled to know things like where CAFOs are, how much waste they generate, how they ensure their waste does not pollute waterways, and whether they are complying with the Clean Water Act. Our interest is not in legitimately private information.

Accordingly, enclosed please find the disk produced to us that accompanied EPA's April 4 letter. NRDC has already returned the disk accompanying EPA's January 31 letter. NRDC has deleted the files on the April 4 disk from our computer system. We also will destroy paper copies, if any, of materials for Nebraska or Montana from the April 4 disk.

Please contact me at (202) 289-2361 if you have any questions concerning this response.

Sincerely

Jon P. Devine, Jr. Senior Attorney Water Program

Natural Resources Defense Council



NATURAL RESOLUCES DIMENTAL COURSE

Way 6, 2013

decty Milschele
U.S. Environmental Protection Agency
Office of Water
Mall Code 4203M
1280 Pennsylvania Avenue, NW
Macrinetton (3C 2046)

Re: Freedom of Information Act Resignee #2013-001515

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Semior Attorney

Water Program

Natural Resources Defense Council